

### REMARKS

Claims 1-5, 8-14, 16-20, 24, 34-35 and 38-40 are active. Claims 30 and 31 are pending but were previously withdrawn from consideration. Rejoinder of these claims is respectfully request since they depend from claim 17. Claims 17 and 24 have been revised as discussed with the Examiner. Claims 21-23 have been cancelled. No new matter has been added. Favorable consideration of these amendments and allowance of the remaining claims is respectfully requested.

### Interview Summary Record

The Applicants thank Examiner Collins for the courteous and helpful interview of September 2, 2010. Amendments to claim 17 to avoid the prior art rejection were discussed including the insertion of the term “transgenic”. It was indicated that claim 24 would be allowable if it were amended to require a plant having a modified phenotype and to include the structural description of the elements of the genetic construct from claim 21. The Examiner indicated that further revision of claims 21-23 would raise new issues and suggested cancellation of those claims to expedite allowance of this application.

### Allowable Claims

The Applicants thank Examiner Collins for allowing Claims 1-5, 8-14, 16, 18-20, 34-35 and 38-40.

### Rejection—35 U.S.C. §102(b)

Claims 17 and 21-24 were rejected under 35 U.S.C. 102(b) as being anticipated by Hemerly, et al., WO 01/02430. This rejection is moot in view of the cancellation of claims 21-23 and in view of the amendment of claims 17 and 24 as discussed with the Examiner.

Conclusion

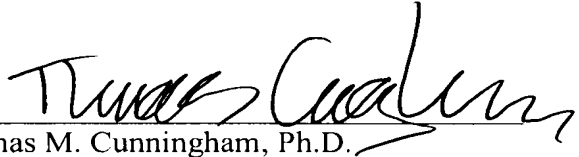
In view of the amendments and remarks above, the Applicants respectfully submit that this application is now in condition for allowance. An early notice to that effect is earnestly solicited.

Respectfully submitted,

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